IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7940 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANKABHAI KUBERBHAI PATEL

Versus

KANTIBHAI BHUDARBHAI PRAJAPATI

Appearance:

SANJAY R PATEL for Petitioner

RULE SERVED for Respondent No. 1

MS AVANI S MEHTA for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/01/2001

ORAL JUDGMENT

This is an appeal under section 173 of the Motor Vehicles Act, 1988 against the award dated 29.9.1999 passed by the learned Motor accident Claim Tribunal

(Main), Sabarkantha, Himatnagar in Civil Misc.Application No.1200/98 filed by the appellant above named for interim compensation under Section 140 of the Motor Vehicles Act, 1988 (for short, 'the Act') on the 'no fault liability' principle. The learned tribunal has dismissed the aforesaid application of the appellant mainly on the ground that though it has transpired from the record that the appellant himself was going on his kinetic Luna bearing No.GJ-9-O-9377, the appellant has falsely stated that he was going on foot. The tribunal has also observed that the appellant was a joint tort-feasor and, therefore, he could not claim compensation from the owner of the opposite vehicle. On the aforesaid set of finding, the learned tribunal dismissed the said interim application of the appellant under section 140 of the Act.

2. I have heard the ld. Advocates for the appellant as well as for the Insurance Company. I have also perused the papers. It is clear that simply because the appellant has wrongly stated that he was going on foot and if ultimately it has transpired that he was also going on motor vehicle, that by itself would not take away the right of the appellant to claim compensation under Section 140 or 166 of the Act. Therefore, dismissal of interim application of the appellant on this ground cannot be sustained in the eye of law. Another aspect of the matter is that the petition has been dismissed by the tribunal on the ground that the appellant was a joint tort-feasor. Let us take it that the said finding is true and it is not assailed by the appellant. Even in that event, there is no law that when two vehicles dash with one another and the drivers or owners of one or both the vehicles sustain injuries, then they cannot claim compensation from the driver, owner or Insurance Company of the opposite vehicle.

3. The only point which is required to be considered in such cases, would be the contributory negligence of the claimant. If the claimant is proved to be contributory negligent, the amount of compensation may be deducted vis-a-vis, the contribution made by him in the cause of accident. At the same time, if the claimant himself is proved to be the sole negligent person, and if the driver of the opposite vehicle is not found to be negligent at all, then in that event, such claimant may not be entitled to compensation from the driver, owner or the insurer of the opposite vehicle. Here the application has been filed under Section 140 of the Act wherein the question of negligence is not required to be considered at all. Therefore, if the question of

negligence of the offending vehicle is not required to be considered, the question of negligence of the appellant can equally not to be considered. If the issue of negligence is taken out from the matter, then there is no obstacle in the way of the appellant in getting interim compensation under section 140 of the Act.

4. In the above view of the matter, I am of the view that simply because the appellant may have contributed to the cause of accident, it may not take away his right of compensation under section 140 of the Act. It is, therefore, clear that the tribunal has committed error in law as well as in fact in rejecting the application of the appellant for compensation under section 140 of the Act. I am of the opinion that the appellant is and was entitled to interim compensation.

5. In the result, the present appeal is allowed. The order of the tribunal dated 29.9.1999 is ordered to be quashed and set aside. The respondent Insurance Company is directed to pay to the appellant interim compensation of Rs.25,000/- with interest at 12% p.a. from the date of application till the date of payment under section 140 of the Act. It is made clear that the respondent Insurance Company shall deposit the said amount before the tribunal concerned and on such deposit, 50% thereof shall be paid to the appellant and the remaining amount shall be kept in Fixed Deposit on usual terms. This is subject to the condition that the appellant submits an undertaking and surety to the satisfaction of the tribunal to the effect that the appellant shall refund the said amount to the Insurance Company in case he fails ultimately in the petition. The appellant shall also not allow the petition to go in default and he shall also not be permitted to withdraw the petition. In other words, the appellant shall obtain orders on merit in his petition.

The appeal is accordingly allowed.

17.1.2001 [D P Buch, J.]
msp